APPENDIX

EXHIBIT "A"

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

OLD COLONY TRUST COMPANY as Trustee, *Appellant*,

—vs.—

THE CITY OF SEATTLE, COUNTY OF KING, W. W. SHIELDS, as Treasurer, and MATT STARWICH, as Sheriff of King County, *Appellees*.

No. 194

AFFIDAVIT OF HOWARD A. HANSON IN SUPPORT OF MOTION TO DISMISS

STATE OF WASHINGTON }
COUNTY OF KING } ss.

HOWARD A. HANSON, being first duly sworn on oath deposes and says: That this affidavit is made in support of the motion to dismiss herein of Appellees; that affiant is an attorney-at-law, duly admitted to practice before the bar of this court; that at all times herein mentioned he has been and now is the Chief Civil Deputy Prosecuting Attorney of King County, Washington, and as such has had charge for King County and its taxing officers of all litigation

over the 1919 personal property tax herein involved; that the validity of this tax was attacked in the Superior Court of the State of Washington for King County in Cause No. 139815 entitled "Puget Sound Traction Light & Power Company, a corporation, Plaintiff vs. The City of Seattle, County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County, and Wm. A. Gaines, as Treasurer of King County, Defendants."

That on the 10th day of December, 1920, the said Superior Court entered a final judgment and decree affirming the validity of said tax and dismissing the case; that plaintiff appealed said case to the Supreme Court of the State of Washington, the same being docketed as Cause No. 16497 and entitled "Puget Sound Power & Light Company, a corporation, formerly Puget Sound Traction Light & Power Company, Appellant, vs. The City of Seattle, et al., Respondents—The City of Seattle, Appellant, v. Puget Sound Power & Light Company, et al., Respondents"; that said appeal was heard before the Supreme Court of the State of Washington in Department No. 2 and on October 15, 1921, that Department affirmed the judgment and decree of the trial court and on a rehearing before the Supreme Court of the State sitting *en banc* said court on June 12, 1922, adhered to the decision of the Department and affirmed the judgment, all of which is set forth in 117 Wash. p. 351, *et seq.*

That on writ of error proceedings to this court in

Cause No. 653, October Term, 1922, entitled "Puget Sound Power & Light Company, and The City of Seattle, Plaintiffs in Error, vs. County of King, Frank W. Hull, as Assessor of King County, Norman M. Wardall, as Auditor of King County and Wm. A. Gaines, as Treasurer of King County, Defendants in Error", the separate writ of error of The City of Seattle was dismissed on motion and the case was affirmed as to Plaintiff in Error, Puget Sound Power & Light Company, the opinion of this court being set forth in 264 U. S. p. 22, 68 L. Ed. 541; that when the remittitur from this court came down to the State Supreme Court and from that court to the trial court, and was there filed, appellee W. W. Shields, as Treasurer of King County attempted but was unable to collect such tax with interest in due course and thereupon prepared and filed with appellee Matt Starwich, as Sheriff of said King County, papers in distraint.

Thereupon the said Matt Starwich as Sheriff of King County pursuant to Sec. 11258 Rem. Comp. Stat. distrained sufficient goods and chattels belonging to the person charged with such tax, namely the Puget Sound Power & Light Company, to pay the same with interest at the rate of fifteen (15%) per cent per annum from the 15th day of March, 1920, together with all accruing costs and in such notice of distraint fixed the 10th day of June, 1924, as the day on which he would sell such goods and chattels for such tax with interest and costs (R. 12, 13);

that thereupon said Puget Sound Power & Light Company brought suit in the United States District Court for the Western District of Washingon, Northern Division, the same being Cause No. 404-E, entitled "Puget Sound Power & Light Company, a corporation, Plaintiff, vs. The City of Seattle, County of King, Matt Starwich as Sheriff of King County and W. W. Shields, as Treasurer of King County, Defendants," to enjoin such sale and to require The City of Seattle to pay to such plaintiff a portion of the amount of such tax by reason of a provision in the agreement of sale of the street railway system in the City of Seattle owned by such plaintiff and in 1919 sold to The City of Seattle; that in such suit The City of Seattle moved to dismiss the bill of complaint as to The City and Defendants County of King, W. W. Shields, as Treasurer and Matt Starwich, as Sheriff of such County made a separate motion to dismiss as to them and each of them; these motions were granted by the court on June 5, 1924 (300 Fed. 441) at which time application for a temporary injunction was denied.

That on June 7, 1924, three days before the date set for the Sheriff's sale the tax with interest to the date of payment, together with all accruing costs was paid by said Company to such Sheriff in the total amount of $655,296.20, as is more particularly shown by the affidavits of said Treasurer and Sheriff attached to this motion to dismiss; that on said date said Puget Sound Power & Light Company

by leave of court filed an amended bill of complaint in said cause against The City of Seattle alone which was likewise dismissed on motion (300 Fed. 443). On appeal to the Circuit Court of Appeals for the Ninth Circuit the action of the District Court was reversed as against The City alone, but affirmed as against appellees County of King, W. W. Shields, as Treasurer, and Matt Starwich, as Sheriff of King County (5 Fed. R. 393, 2d Series); that from such decision of the Circuit Court of Appeals, The City of Seattle applied to this court for a writ of certiorari which was denied by this court on October 19, 1925, in Cause No. 627 October Term, 1925, entitled "The City of Seattle, a Municipal Corporation, Petitioner (Defendant), vs. Puget Sound Power & Light Company, Respondent (Plaintiff)."

That such cause No. 404-E in said District Court is now pending between said plaintiff and The City of Seattle and involves the question as to the liability of The City to the plaintiff for three-fourths of the amount of the tax under the agreement proviso set up in Paragraph II of the supplemental Bill of Complaint of said cause and which appears on page 11 of the record herein.

HOWARD A. HANSON

Subscribed and sworn to before me this 4th day of November, 1925.

(SEAL) ETHEL CURRIER

Notary Public in and for the State of Washington, residing at Seattle.

EXHIBIT "B"

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

OLD COLONY TRUST COMPANY as Trustee, *Appellant*,

—VS.—

THE CITY OF SEATTLE, COUNTY OF KING, W. W. SHIELDS, as Treasurer, and MATT STARWICH, as Sheriff of King County, *Appellees*.

No. 194

AFFIDAVIT OF MATT STARWICH IN SUPPORT OF MOTION TO DISMISS

STATE OF WASHINGTON }
COUNTY OF KING } ss.

MATT STARWICH, being first duly sworn on oath deposes and says: That this affidavit is made in support of the motion to dismiss herein of Appellees; that at all times herein mentioned he has been and now is the duly elected, qualified and acting Sheriff of King County, Washington, and as such Sheriff is one of the Appellees herein; that he has read the affidavit of Howard A. Hanson in support of the motion of Appellees, County of King, W. W. Shields, as Treasurer, and Matt Starwich, as Sheriff of King County, to dismiss the appeal herein; that he is fa-

miliar with the facts stated in said affidavit and that the same are true; that W. W. Shields, as Treasurer of King County, being unable in due course to collect the tax herein involved with interest prepared and filed with affiant as such Sheriff papers in distraint as provided by law; that thereupon, pursuant to Sec. 11258 Rem. Comp. Stat. affiant as such Sheriff proceeded to and did distrain sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate of fifteen (15%) per cent per annum from the 15th day of March, 1920, together with all accruing costs and advertised the same as provided by law and in such notice fixed the 10th day of June, 1924, as the day appointed for such sale.

That on the 7th day of June, 1924, the person charged with such taxes, namely, the Puget Sound Power & Light Company paid to affiant the said tax with interest to date of such payment, together with all accruing costs in the total amount of $655,296.20 by its check on the Dexter Horton National Bank of Seattle, Washington, duly certified by the Cashier of said bank, which check on said date in the presence of affiant was photographed, a true photographic print of such check being hereto attached, marked "Exhibit 1" and by reference made a part hereof; that on said date such check was cashed and the amount thereof less the Sheriff's costs, was paid to W. W. Shields, as Treasurer of said King County in full payment of said taxes with interest,

affiant giving his official receipt for the Sheriff's costs; that upon such date affiant as such Sheriff released any and all property embraced in said distraint proceedings and terminated such proceedings by reason of such full payment of taxes, interest and costs.

MATT STARWICH

Subscribed and sworn to before me this 4th day of November, 1925.

ETHEL CURRIER

Notary Public in and for the State of Washington, residing at Seattle.

(SEAL)

Exhibit "1"

PUGET SOUND POWER & LIGHT COMPANY
DEXTER HORTON NATIONAL BANK
SEATTLE, WASH.
JUN - 7 1934
AUDIT NO.
CASH NO. 6573
PAY $655296 AND 20 CTS
$655296.20
IN FULL FOR ACCOUNT REPRESENTED ON REVERSE SIDE OF THIS CHECK
PUGET SOUND POWER & LIGHT COMPANY
ORDER OF
Matt Starwich, Sheriff of King Co.
County-City Bldg.
Seattle, Wash.
CERTIFIED
COUNTERSIGNED

Note: The photograph on the left is that of Mr. W. W. Shields, County Treasurer, on the right Mr. Matt Starwich, County Sheriff. The photographs were taken at the same time for publication in the press and are reproduced from the photographer's pictures.

EXHIBIT "C"

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

OLD COLONY TRUST COMPANY as Trustee, *Appellant*,

—VS.—

THE CITY OF SEATTLE, COUNTY OF KING, W. W. SHIELDS, as Treasurer, and MATT STARWICH, as Sheriff of King County, *Appellees*.

No. 194

AFFIDAVIT OF W. W. SHIELDS IN SUPPORT OF MOTION TO DISMISS

STATE OF WASHINGTON
COUNTY OF KING } ss.

W. W. SHIELDS, being first duly sworn on oath deposes and says: that this affidavit is made in support of the motion to dismiss herein of Appellees; that at all times herein mentioned he has been and now is the duly elected, qualified and acting Treasurer of King County, Washington, and as such Treasurer is one of the appellees herein; that he has read the affidavit of Howard A. Hanson in support of the motion of Appellees, County of King, W. W. Shields, as Treasurer, and Matt Starwich, as Sheriff of King County to dismiss the appeal herein; that he is familiar with the facts stated in said affidavit and that the same are true.

That affiant as Treasurer of King County, being

unable in due course to collect the tax herein involved with interest, prepared and filed with Matt Starwich, as Sheriff of King County, papers in distraint as provided by law; that thereupon and in accordance with the provisions of law the Sheriff proceeded to and did distrain sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest and all accruing costs and fixed the 10th day of June, 1924, as the day appointed for such sale; that on the 7th day of June, 1924, the person charged with such taxes, namely, the Puget Sound Power & Light Company in the presence of affiant and in his office in the County-City Building, Seattle, Washington, paid to the Sheriff of King County the said tax with interest to such date of payment, together with all accruing costs in the total amount of $655,296.20 by its check on the Dexter Horton National Bank of Seattle, Washington, duly certified by the Cashier of said bank; that on said date the said Matt Starwich as such Sheriff paid the said sum less the Sheriff's costs into the County Treasury and affiant as County Treasurer of King County issued to said Puget Sound Power & Light Company his receipt evidencing the payment in full of such tax with interest.

W. W. SHIELDS

Subscribed and sworn to before me this 4th day of November, 1925.

(SEAL) ETHEL CURRIER

Notary Public in and for the State of Washington, residing at Seattle.

REMINGTON'S COMPILED STATUTES OF WASHINGTON, 1922

"Section 11170.

"On the completion of the equalization of the property of the railroad companies and other property in the state, by the state board of equalization it shall be the duty of the state board of equalization, to apportion the value of the operating properties of such railroad, to the county or counties through or into which the lines thereof may extend, according to the classification and value thereof, in such proportion to the entire value thereof, as the length of the line in each county may bear to the entire length of line within the state, which valuation, together with a description of the railroad property, assessed, giving the name of the company and the length of line in said county, shall be certified by said board, to the county assessor of the proper county. The county assessor shall in like manner distribute the value so certified to him, to the several cities, towns, road districts, school districts and other taxing districts, in his county, entitled to a proportionate value of the operating property of such railroad; and each assessment so apportioned shall be placed upon the tax-rolls of said county, and the taxes extended against the same, as against other property in said county, cities, towns, school, road, and other taxing districts.

"Section 11224.

"When the state board of equalization shall have

completed their equalization, the state auditor shall, within ten days after the adjournment of said board, transmit to each county assessor a transcript of the proceedings of the board, specifying the amount to be levied and collected on said assessment-books for state purposes for such year. He shall also certify to each county assessor the amounts due to each fund and unpaid from such county for the seventh preceding year, which sum shall be added to the amount levied for the current year.

"Section 11231.

"It shall be the duty of county commissioners, city and town councils, and of school directors of school districts, lying wholly, or in part, within the limits of any incorporated city or town, to meet on the first Monday in October, and at the time and place designated in said notice, when and where any taxpayer who may appear shall be heard in favor or against any proposed tax levies. When such hearings shall have been concluded, such county commissioners, city or town councils, and school directors, shall proceed to make, determine, and decide the amount of taxes to be levied upon the current assessment-rolls. All taxes shall be levied or voted in specific sums, and shall not exceed the amount specified in such published estimates.

"Section 11236.

"The county auditor shall extend the taxes upon the assessment-books in the form herein prescribed.

The rate per cent necessary to raise the required amount of the total tax for state, county indebtedness, county current expense, road, bridge, school, special school and incorporated cities, and all other county, school, municipal and state purposes, shall be computed on the assessed valuation as equalized by the county board of equalization as a whole, under the head of consolidated tax. The rate per cent necessary to raise the required amount of any special district tax shall be computed as to the attested valuation of property within such district, as equalized by the county board of equalization; all taxes assessed against any property shall be added together and carried to the total column. In extending any tax, whenever it amounts to a fractional part of a cent greater than five mills, it shall be made one cent, and whenever it amounts to five mills or less than five mills, it shall be dropped. The amount of all taxes shall be entered in the proper columns, as shown by entering the rate per cent of consolidated tax and of such special tax at the head of the proper columns; on the first day of each month the county treasurer shall distribute pro rata, according to the rate of levy for each fund, the amount collected as consolidated tax during the preceding month, and shall certify the same to the county auditor.

"Section 11252.

"The county treasurer shall be the receiver and collector of all taxes extended upon the tax-books of

the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes upon real property made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the thirty-first day of May in each year, after which date they shall become delinquent, and interest at the rate of twelve per cent per annum shall be charged upon such unpaid taxes from the date of delinquency until paid: Provided, however, when the total amount of tax payable by one person is two dollars or more, then if one-half of such taxes be paid on or before said thirty-first day of May, then the time of payment of the remainder thereof shall be extended and said remainder shall be due and payable on or before the thirtieth day of November following, but if the remaining one-half of such taxes be not paid on or before the thirtieth day of November, then such remaining one-half shall be delinquent, and interest at the rate of twelve per cent per annum shall be charged thereon from the first day of June preceding until paid: Provided further, there shall be an allowance of three per cent rebate to all payers of taxes who shall pay the taxes on real property in one payment and in full on or before the fifteenth day of March next prior to the date of delinquency. All rebates allowed under this section shall be charged to the county current expense fund and all collections from penalties and interest on de-

linquent taxes shall be credited to the current expense fund.

"Section 11255.

"The owner or owners of property against which there are delinquent taxes, shall have the right to pay the current tax without paying any delinquent taxes there may be against said property: Provided, however, that in issuing a receipt for such current tax the county treasurer shall indorse upon the face of such receipt a memorandum of all delinquent taxes against the property therein described, showing the year for which said tax is delinquent and the amount of delinquent tax for each and every year.

"Section 11258.

"On the first Monday in February succeeding the levy of taxes, the county treasurer shall proceed to collect all personal property taxes. He shall give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid on or before the fifteenth day of March of such year, he shall forthwith proceed to collect the same. In the event that he is unable to collect the same in due course, he shall prepare papers in distraint, which shall contain a description of the personal property, the amount of the tax, the amount of accrued interest at the rate of fifteen per cent per annum from March 15th, and the name of the owner or reputed owner, and shall file the same with the county sheriff, who shall immediately without demand or notice dis-

train sufficient goods and chattels belonging to the person charged with such taxes to pay the same with interest at the rate of fifteen (15) per cent per annum from the fifteenth day of March of such year, together with all accruing costs, and shall immediately proceed to advertise the same by posting written notices in three public places in the county in which such property has been levied upon, one of which places shall be at the county courthouse, such notices to state the time when and the place where such property will be sold. If the taxes for which such property is distrained and the interest and cost accruing thereon are not paid before the date appointed for such sale, which shall not be less than ten (10) days after the taking of such property, such sheriff shall proceed to sell such property at public auction, or so much thereof as shall be sufficient to pay such taxes with interest and costs, and shall pay to the treasurer the money so collected at such sale, and if there be any overplus of money arising from the sale of any personal property, the treasurer shall immediately pay such overplus to the owner of the property so sold, or to his legal representative: Provided, that whenever it shall become necessary to distrain any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish-trap, pound-net, reef-net, set-net, drag-seine fishing location, which shall be deemed to have been distrained and taken into possession when the said sheriff shall have, at least thirty (30) days be-

fore the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located, a notice in writing citing that he has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of tax due with interest, and the time and place of sale. A copy of said notice shall also be sent to the owner or reputed owner at his last known address by registered letter at least thirty (30) days prior to the date of sale: And provided, further, that if any personal property upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, the county treasurer may demand such taxes without the notice provided for in this section, and if necessary may distrain sufficient goods and chattels to pay the same as provided in this act."